IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 29612 of 2006(A)

OS.3/2002 of III ADDL.SUB COURT, KOZHIKODE

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PETITIONER:

THE KOZHIKODE NAGARA SABHA,
REPRESENTED BY ITS SECRETARY,
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN,SC,KOZHIKODE CORP

RESPONDENTS:

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1. P.I.DENNIS, S/O. P.V.ITTIACHAN,
RESIDING AT VARKEY BHAVAN, LOURDEPURAM,
KIZHAKKUMPATTUKARA AMSOM DESOM OF TALAPPILLY
TALUK, TRICHUR DISTRICT.

2. MARIYAMMA JOHN,
PAZHAYAVEETTIL, KURIACHIRA AMSOM AND DESOM OF
TALAPPILLY TALUK, TRICHUR DISTRICT.

3. ITTY, S/O. LATE VARKEY,
MINOR, REP. BY HIS MOTHER AS HIS NEXT
FRIEND AND GURADIAN ROSAMMA VARKEY,
VARKEY BHAVAN, LOURDEPURAM, KIZHAKKUMPATTUKARA
AMSOM DESOM OF TALAPPILLY TALUK, TRICHUR DISTRICT.

BY ADV. SRI.P.V.LONACHAN
SRI.P.G.PRESANNAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- A COPY OF THE PLAINT IN O.S.3/2002 ON THE FILE OF THE SUBORDINATE JUDGE OF KOZHIKODE DATED 21.12.2001

EXT.P2- A COPY OF THE WRITTEN STATEMENT FILED BY THE CORPORATION IN O.S.3/02 III ADDL. SUB JUDGE, KOZHIKODE DATED 17.6.2002

EXT.P3- A COPY OF THE I.A.477/2006 IN O.S.3/2002 DATED 30.1.2006

EXT.P4- A COPY OF THE PETITION IN I.A.4597/2003 DATED OCTOBER 2003

EXT.P5- A COPY OF THE LIST OF DOCUMENTS PRODUCED AS PER EXT.P4 APPLICATION DATED 2.12.04

EXT.P6- A COPY OF THE CHIEF AFFIDAVIT OF MR.PREMANANDAN FILED BY THE DEFENDANT DATED 9.10.06

EXT.P7- A COPY OF THE ORDER PASSED BY THE III ADDL. SUBORDINATE JUDGE, KOZHIKDE IN O.S.3/2002 DATED 25.10.2006

(TRUE COPY)

P.A TO JUDGE

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.29612 OF 2006

.....

DATED THIS THE 8th DAY OF JANUARY, 2007

JUDGMENT

Petitioner the Corporation of Kozhikod is the defendant and the respondents are plaintiffs in O.S.3 of 2002 on the file of Addl.Sub Judge, Kozhikod. Plaintiffs' evidence in the suit was complete. On the side of the defendant, DW1 was partly examined. On the adjourned date, learned Sub Judge passed Ext.P7 order which is challenged in this petition. Under Ext.P7 order, learned Sub Judge passed the following directions.

> "That being so, the court refuses permission to defendant-corporation to examine DW1 any further, and direct that, if it intends to adduce evidence, it may adduce evidence strictly adhering to principles of evidentiary law examining witnesses who were privy to the transactions, or their successors, or qualified and competent contemporaries in official business, who would be able to adduce secondary evidence; or else, the court will be constrained to close the evidence on the side of the defendant-corporation and to dispose of the matter accordingly".

2. This petition is filed under Article 227 of

Constitution of India challenging Ext.P7 order.

3. Learned counsel appearing for the petitioner and respondent were heard.

4. When DW1 was examined in part as a witness on the side of defendant, learned Sub Judge is not competent to stop further examination of the witness without completing the examination for the reasons stated in Ext.P7 order. If the view of learned Sub Judge is that, evidence of DW1 is not sufficient to prove the defence taken by petitioner in the suit that may be a ground to reject the defence raised in the suit, but that cannot be a ground to disallow defendant from completing the examination of DW1. So also the fact that defendant has produced several records is not a sufficient ground to hold that defendant is not entitled to adduce further evidence or to complete the examination. As rightly pointed out by learned counsel appearing for petitioner and respondent, those documents were produced by the defendant, not of their own but due to the petition filed by the plaintiffs for that purpose. It is for the defendants to decide who are to be examined on their

side, to prove their case. Learned Sub Judge should not have interfered with that right of the defendant or pass Ext.P7 order, which on the face of it is illegal. Ext.P7 order is therefore quashed. Learned Sub Judge is directed to complete examination of DW1 and permit petitioner to adduce further evidence and decide the case on merit after completing the evidence in accordance with law.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-